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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DANIEL WILLIAM MAY,
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Petitioner,

v.

ERIC ARNOLD, Warden, et al.,

Respondent.

Civil No. 14CV2038-BEN(JMA)

**ORDER DENYING REQUEST FOR
"STAY IN ABEYANCE"
[DOC. NO. 3]**

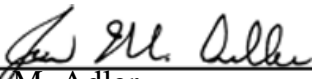
Petitioner is a state prisoner proceeding pro se with a Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254. On August 28, 2014, Petitioner filed a Petition for Writ of Habeas Corpus, a Motion for Leave to Proceed In Forma Pauperis, and a document titled: "Request for Stay in Abeyance." [Doc. Nos. 1, 2 & 3.] Petitioner's Motion for Leave to Proceed In Forma Pauperis, was granted by the Hon. Roger T. Benitez on September 8, 2014 [Doc. No. 3] and Petitioner's request for "stay in abeyance" was referred to the undersigned.

The stay and abeyance procedure is one of several options a habeas petitioner who files a "mixed petition" (meaning a habeas petition containing both exhausted and unexhausted claims) may choose to pursue in order to permit the petitioner to return to state court to exhaust additional claims while the federal proceedings are stayed. Rhines v. Weber 544 U.S. 269, 125 S.Ct. 1528, 1534-35 (2005). Here, although Petitioner requests a "stay in abeyance," the purpose of his request is not to exhaust claims in the state court system, but rather to allow him time to gather documents in support of his Petition.

1 The Court has concurrently issued an Order Requiring Response to Petition and setting
2 briefing deadlines for Respondents to either file a motion to dismiss or an answer. As outlined
3 in that Order, Petitioner is not required to make any further filings in support of his Petition until
4 either December 1, 2014 (if Respondents file a motion to dismiss) or December 17, 2014 (if
5 Respondents file an answer to the Petition). As no action is required of Petitioner for two and
6 a half to three months, there is no basis to stay this proceeding in order to allow Petitioner time
7 to acquire documents. If Petitioner is unable to obtain the documents he needs to respond to
8 Respondents' motion to dismiss or answer, Petitioner may file a motion requesting his deadline
9 to respond be extended. Petitioner's motion for "stay in abeyance" is, therefore, denied.

10 **IT IS SO ORDERED.**

11 DATED: September 11, 2014

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13 Jan M. Adler
14 U.S. Magistrate Judge
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